UNIVERSAL OIL PRODUCTS COMPANY,

Petitioner,

vs.

ROOT REFINING COMPANY and SKELLY OIL COMPANY,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRITS OF CERTIORARI

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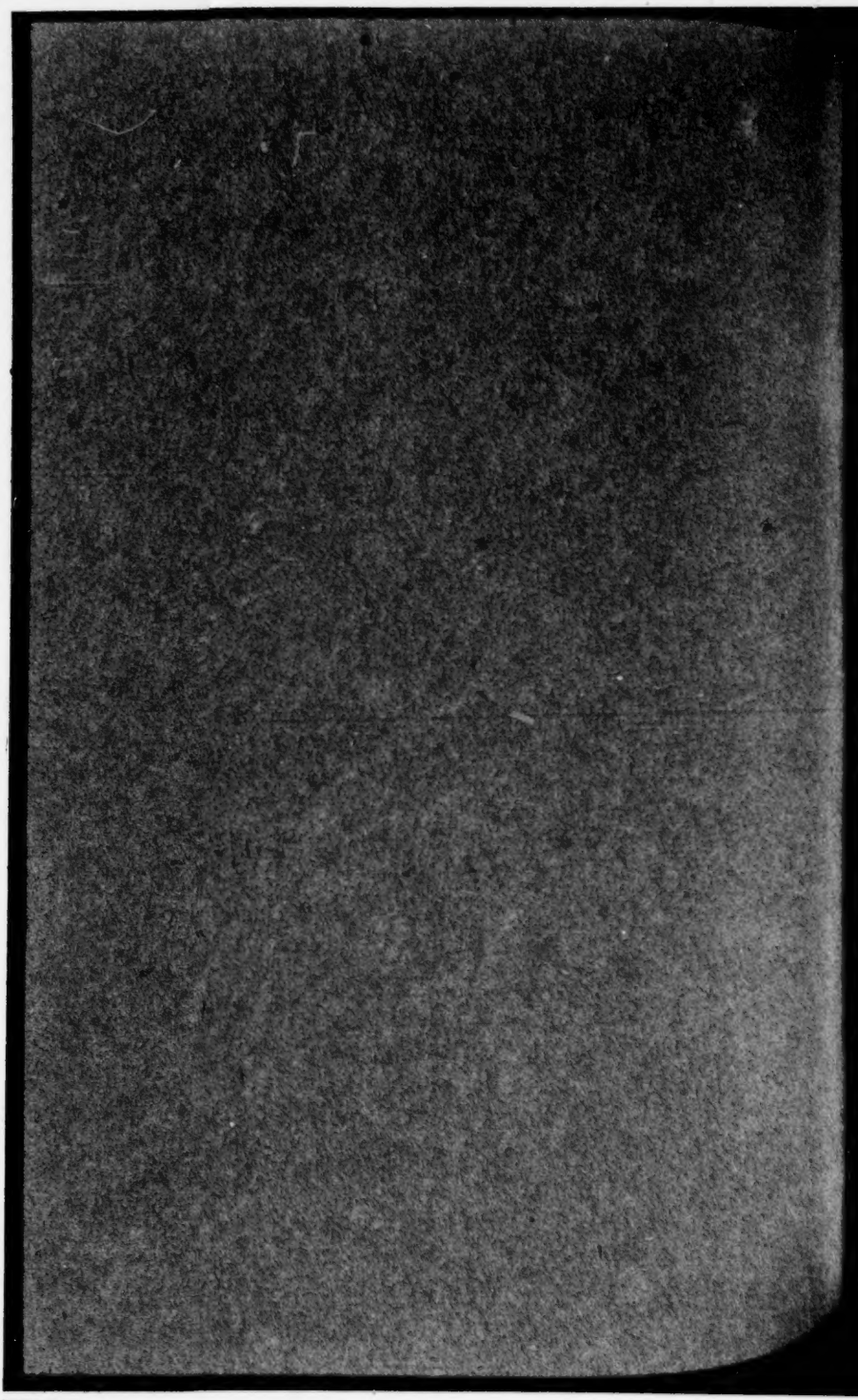

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No.

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Orders Below

The orders of the Court of Appeals dated June 20, 1947, are set forth at pages 174-7, of the transcript of the record filed herewith.*

Jurisdiction

The facts supporting the jurisdiction of this Court are set forth in the petition.

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*References styled "R. " are to pages in the certified record accompanying this petition; references styled "v. , p. " are to pages of the certified record in cause numbered 48, October Term, 1945, incorporated by reference.

Cases believed to sustain the jurisdiction of this Court are as follows:

U. S. Alkali Assn. v. *U. S.*, 325 U. S. 196;
In re 620 Church St. Corp., 299 U. S. 24, 26;
Holiday v. *Johnston*, 313 U. S. 342, 348, n. 2;
In re Chetwood, Petitioner, 165 U. S. 443, 462;
McClellan v. *Carland*, 217 U. S. 268;
Union Pac. R. R. Co. v. *Weld County*, 247 U. S. 282;
Spiller v. *Atchison, T. & S. F. Ry. Co.*, 253 U. S. 117.

Statement of Facts

The facts are sufficiently set forth in the petition.

Specification of Errors

If the writs are granted, petitioner will urge that the Circuit Court of Appeals erred in the following respects:

1. In assuming jurisdiction to make and enter the orders dated June 20, 1947,* in a matter which did not constitute a case or controversy within the meaning of Article III, Section 2, of the Constitution of the United States.

*Unless otherwise indicated, reference throughout this brief to the orders dated June 20, 1947, is a reference to those portions of the orders as to which review is sought, *viz.*, that requiring petitioner to show cause, "if any there be", why the judgments of affirmance in the *Root* case should not be vacated by reason of alleged fraud and that permitting Skelly Oil Company to intervene.

2. In assuming jurisdiction to make and enter the orders dated June 20, 1947, in a matter in which there were no adverse parties with legally cognizable adverse interests.

3. In assuming jurisdiction to make and enter the orders dated June 20, 1947, although the causes in which the orders were captioned had become entirely moot, for (a) they had been completely settled by agreement of the parties making provision for vacation of the judgments rendered therein and for dismissal of the bills; and (b) their subject matter had ceased to exist as one of the two patents involved had expired and the other had been held invalid by this Court.

4. In making and entering the orders dated June 20, 1947, captioned in the consolidated cause entitled *"Root Refining Company, Defendant-Appellant, vs. Universal Oil Products Company, Plaintiff-Appellee"*, directing your petitioner to show cause why the judgments of the Circuit Court of Appeals entered on June 26, 1935, should not be set aside and vacated for fraud practiced upon the court, thereby acting contrary to the requirements of due process of law.

5. In making and entering the orders dated June 20, 1947, captioned in the consolidated cause entitled *"Root Refining Company, Defendant-Appellant, vs. Universal Oil Products Company, Plaintiff-Appellee"*, granting Skelly Oil Company leave to intervene for the first time in the appellate court, although there was no case or controversy before the court and Skelly had not sought to intervene in the District Court, did not present any issue of law or fact in common with the *Root* case and presented no independent ground for federal jurisdiction.

6. In deviating from the mandate of this Court, dated July 11, 1946, by making and entering the orders dated June 20, 1947.

POINT I.

THE CIRCUIT COURT OF APPEALS, IN ASSUMING JURISDICTION TO MAKE AND ENTER THE ORDERS DATED JUNE 20, 1947, ACTED CONTRARY TO THE DECISIONS OF THIS COURT AND OF OTHER CIRCUIT COURTS OF APPEAL.

The jurisdiction of the courts of the United States is limited by the Constitution to cases or controversies (Constitution, Article III, Section 2). The case or controversy must be actual. *Coffman* v. *Breeze Corporations,* 323 U. S. 316; *Aetna Life Ins. Co.* v. *Haworth,* 300 U. S. 227; *Willing* v. *Chicago Auditorium,* 277 U. S. 274; *Liberty Warehouse Co.* v. *Grannis,* 273 U. S. 70; *New Jersey* v. *Sargent,* 269 U. S. 328; *Muskrat* v. *United States,* 219 U. S. 346; *Smith* v. *American Asiatic Underwriters, Federal,* 9 Cir., 127 F. (2d) 754. The powers of the court invoked must be strictly judicial in nature. *Muskrat* v. *United States,* 219 U. S. 346; *Lord* v. *Veazie,* 8 How. 251; *Osborn* v. *U. S. Bank,* 9 Wheat. 738. An absolute *sine qua non* of an actual controversy is the initial and continued existence of adverse parties asserting adverse interests. *Universal Oil Co.* v. *Root Rfg. Co.,* 328 U. S. 575; *Muskrat* v. *United States,* 219 U. S. 346; *South Spring Gold Co.* v. *Amador Gold Co.,* 145 U. S. 300; *Cleveland* v. *Chamberlain,* 1 Black 419; *Lord* v. *Veazie,* 8 How. 251; *O'Donnell* v. *United States,* 9 Cir., 91 F. (2d) 14. A party must assert a personal and private interest, as opposed to one asserted *pro bono publico. Liberty Warehouse Co.* v. *Gran-*

nis, 273 U. S. 70; *New Jersey* v. *Sargent,* 269 U. S. 328; *Massachusetts* v. *Mellon,* 262 U. S. 447; *Fairchild* v. *Hughes,* 258 U. S. 126; *State of Georgia* v. *Stanton,* 6 Wall. 50; *Osborn* v. *U. S. Bank,* 9 Wheat. 738.

Judged by these principles, the portions of the orders of the Circuit Court of Appeals dated June 20, 1947, of which a review is sought, were not entered in a case or controversy within the meaning of the Constitution and, consequently, the Circuit Court of Appeals was without power to make or enter such portions of said orders.*

Although the orders dated June 20, 1947, were captioned in the *Root* case, no controversy had for years existed between Root and petitioner, the only parties thereto. Root had settled its controversy with petitioner by the settlement agreements of April 1, 1939, and July 28, 1944 (R. 161-73). Root declined to make itself a party or to permit itself to be made a party to the investigation although counsel for petitioner, prior to the entry of the order of the Circuit Court of Appeals dated June 15, 1944, in which the Circuit Court of Appeals purported to set aside the *Root* judgments, offered, if Root desired to be heard upon the question as a party, to preserve to Root the settlement and to consent to the setting aside of the judgments and the reargument of the appeals (see 328 U. S. at pp. 577-8).

Thus any controversy which may at one time have existed between Root and petitioner had become moot long

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*Of course, that portion of the orders which vacated the Court of Appeals' order of June 15, 1944, was within its power. A federal court, lacking any other jurisdiction, always has power, either on notice or *sua sponte* to vacate its judgments and dismiss actions for lack of jurisdiction. *M. C. & L. M. Railway Co.* v. *Swan,* 111 U. S. 379, 382; *Great Southern Fire Proof Hotel Co.* v. *Jones,* 177 U. S. 449, 453.

prior to the entry of the orders dated June 20, 1947. The Circuit Court of Appeals, therefore, was without power to make or enter those portions of the orders here sought to be reviewed. *St. Pierre* v. *United States,* 319 U. S. 41; *Alejandrino* v. *Quezon,* 271 U. S. 528; *Brownlow* v. *Schwartz,* 261 U. S. 216; *American Book Co.* v. *Kansas,* 193 U. S. 49; *Mills* v. *Green,* 159 U. S. 651.

It is clear from the pronouncements of this Court that where litigants at any stage of the proceedings settle their differences, the settlement agreement completely extinguishes the causes of action and any judgments entered thereon and the court is thereby rendered powerless to act thereafter, except to dismiss for lack of jurisdiction. *Dakota County* v. *Glidden,* 113 U. S. 222; *Buck's Stove &c. Co.* v. *Am. Fed. of Labor,* 219 U. S. 581; *Paradise Land & Livestock Co.* v. *Federal Land Bank, Etc.,* 10 Cir., 147 F. (2d) 594, *cert. den.* 326 U. S. 717; *Walling* v. *Shenandoah-Dives Mining Co.,* 10 Cir., 134 F. (2d) 395. *Cf. Smallwood* v. *Gallardo,* 275 U. S. 56; *Gallardo* v. *Santini Co.,* 275 U. S. 62; *United States* v. *Alaska S. S. Co.,* 253 U. S. 113, 116.

Under the foregoing authorities the court below, in the absence of adversary parties and in the absence of a case or controversy, had no power to take any effective juridical action binding upon petitioner's property rights, whether by way of ordering petitioner to show cause why judgments which had been encompassed in the settlements should not be set aside for fraud or of permitting intervention.

But this does not mean that the Court of Appeals, even where no case or controversy exists, lacks the power "to unearth such a fraud" perpetrated against it and "to unearth it effectively" (328 U. S at p. 580).

The court may act effectively in a variety of ways. For example:

1. it may spread upon its record the testimony taken in the investigation and the report of its investigator;

2. it may approve such report and give publicity thereto;

3. it may commence disciplinary proceedings against officers of the court;

4. it may suggest or cause the commencement of contempt of court proceedings; and

5. it may make available to public prosecutor and private litigant alike the testimony and the report.

The foregoing, we respectfully submit, would constitute, even in the absence of a case or controversy, an effectual unearthing of fraud against the court, without doing violence to established principles of due process of law and should fully satisfy the strictest requirements of a court properly jealous of its honor. Under the circumstances here presented the investigation should surely not be given any greater effect than an indictment.

POINT II.

THE ORDERS OF JUNE 20, 1947, DIRECTING UNIVERSAL TO SHOW CAUSE WHY THE JUDGMENTS IN THE *ROOT* CASE SHOULD NOT BE VACATED FOR FRAUD ARE VOID BECAUSE THE CIRCUIT COURT OF APPEALS ACTED WITHOUT JURISDICTION AND DEPARTED COMPLETELY FROM THE REQUIREMENTS OF DUE PROCESS OF LAW.

(A) The court acted without jurisdiction.

Since the instant proceeding did not constitute a legally cognizable case or controversy, the Circuit Court of Ap-

peals was manifestly without power to make and enter the orders directing Universal to show cause why the *Root* judgments should not be vacated for fraud. The decisions of this Court heretofore referred to in Point I make it unnecessary to argue again the proposition that, absent a case or controversy within the meaning of the Constitution, a federal court is totally powerless to take any step such as that contemplated by the orders of the Circuit Court of Appeals.

Moreover, the Circuit Court of Appeals, in requiring petitioner to show cause why the judgments in the *Root* case should not be set aside for fraud, deviated from the mandate of this Court, dated July 11, 1946, which directed the Circuit Court of Appeals to enter a judgment in conformity with the opinion of this Court and commanded that such execution and proceedings be had in the cause, in conformity with the opinion and judgment of this Court, as according to right and justice ought to be had. This Court, in its opinion, held that petitioner's rights could not be adjudicated in the instant investigation, in which the usual safeguards of adversary proceedings were not observed. The Circuit Court of Appeals, in the continuing absence of an adversary proceeding, has once again purported to enter orders affecting Universal's property rights solely on the basis of the "investigation"; unless the investigation be deemed by the court below to be binding, at least *prima facie*, upon petitioner, it is inconceivable that the Court would undertake to compel petitioner to show cause why the judgments in the *Root* case should not be vacated for fraud. Indeed, it is plain from the stenographer's minutes of the hearing preceding the orders of June 20, 1947, that the intervenor and the court below both intended, by means of an order to show cause, to utilize the results of the "investi-

gation" not merely as a guide for the introduction of evidence or even as a sort of indictment against petitioner, but as *prima facie* proof of petitioner's guilt (R. 139-40, 144-5, 147-8). The action now complained of is, therefore, as improper as was the order of December 29, 1944, which was reviewed and condemned by this Court in its opinion of June 10, 1946.

(B) The orders of June 20, 1947, violate the concepts of due process of law.

This Court, in its previous decision (328 U. S. 575) condemned the action of the Circuit Court of Appeals designed to affect petitioner's property rights and judgments by means of an investigation in which petitioner did not have such opportunity to be heard as is accorded to parties in adversary proceedings. But the Circuit Court of Appeals, on the basis of the identical record condemned by this Court, has directed petitioner to show cause "if any there be" why the *Root* judgments should not be vacated for fraud. A court may not, without a hearing, merely upon the charge of a stranger, without any issues being framed in proper pleadings, and upon information not properly a part of the record, shoulder petitioner with the burden of proving itself innocent of the alleged fraud. The concept of due process, expressed in many opinions of this Court, condemns such practice. *Universal Oil Co.* v. *Root Rfg. Co.*, 328 U. S. 575; *Morgan* v. *United States*, 304 U. S. 1, 19; *Norwegian Nitrogen Co.* v. *U. S.*, 288 U. S. 294; *U. S.* v. *Abilene & So. Ry. Co.*, 265 U. S. 274; *Int. Com. Comm.* v. *Louis. & Nash. R.R.*, 227 U. S. 88; *Windsor* v. *McVeigh*, 93 U. S. 274. The procedure adopted by the Circuit Court of Appeals is so contrary to accepted

standards of judicial action as to constitute a deprivation of your petitioner's property without due process of law and to require, in the public interest, a review by this Court. We respectfully submit that the action taken by the Circuit Court of Appeals departs as completely from established modes of procedure governing litigation as did that of the lower court in *Windsor* v. *McVeigh,* 93 U. S. 274.

It should be noted that the orders here sought to be reviewed do not grant to petitioner the right to have the issue of its alleged fraud determined upon pleadings duly filed nor does it allow trial by jury, if necessary, of controverted issues of fact. On the contrary, the orders, for which review is sought, are summary orders to show cause, patently based upon the record heretofore made, requiring petitioner to prove its innocence although it has never been convicted in any judicially cognizable case or controversy pursuant to the requirements of due process of law. Furthermore, the orders deprive petitioner of its right to be heard on appeal, for they permit the Appellate Court in the first instance to determine the question at issue. Indeed, the orders demonstrate the danger of permitting a departure from established judicial procedure every time the cry of fraud is raised. It is particularly important to preserve the requirements of due process of law when the charge against a party is offensive in character. But the court below seems so overwhelmed by the charge of fraud upon it that it will not permit the matter to be determined by adversary litigation conducted according to constitutional requirements in a proper forum. Against such excess of judicial zeal, this Court should interpose its mandate before irreparable injury is done to the entire federal judicial system and petitioner is destroyed by a judicially sanctioned, but unestablished, stigma of fraud.

Petitioner most earnestly submits that until a controversy legally cognizable by the federal courts has been commenced, and until a trial of the issues therein has been conducted in accordance with the recognized principles of law governing such cases, it should not be subjected to a purported "adjudication" finding it guilty of fraud and thus seriously affecting its property rights. Cases involving millions of dollars of claimed damages are pending against petitioner as a result of the abortive "investigation" heretofore conducted by the court below. The plaintiffs in these cases are waiting hopefully for another "determination" of fraud against petitioner in further proceedings below wherein petitioner will not have the benefits of adversary procedure and due process of law. Such plaintiffs are not entitled to such advantage but should litigate the alleged fraud with petitioner pursuant to the requirements of due process of law. Petitioner is prepared to litigate any such proper case upon the merits in accordance with law and to be bound by the outcome thereof.

POINT III.

THE CIRCUIT COURT OF APPEALS, IN GRANTING LEAVE TO SKELLY OIL COMPANY TO INTERVENE, ACTED WITHOUT JURISDICTION AND IN A MANNER CONTRARY TO THE DECISIONS OF THIS COURT AND OF OTHER CIRCUIT COURTS OF APPEAL.

During the investigation conducted by *amici curiae* and at the prior argument before this Court, *amici curiae* purported to act on behalf of Skelly Oil Company, among others. But these oil companies, including Skelly, "insisted

that they were neither formal nor substantial parties to the *Root* case" and they "did not subject themselves to the court's jurisdiction" either in that case or in the course of the investigation (see 328 U. S. at pp. 577-578). Not until Skelly was assured of the conclusion which the court below would reach in connection with the alleged fraud which was the subject matter of the investigation did it, at a very late date and long after the investigation had been completed, endeavor, by the petition which is one of the bases of the orders here complained of, to become a party which could take advantage of the conclusion which we contend was improperly reached by the court below.*

Irrespective of the inherent inequity of Skelly's position it is plain that as a matter of law the court below had no jurisdiction and no right to permit the intervention. The proceeding before the Court of Appeals has not changed in character since the previous decision by this Court (328 U. S. 575). When the order granting the petition for intervention was made, the Court of Appeals did not have before it an adversary proceeding between adverse parties asserting adverse interests. As we have shown in the first point of this brief, whatever causes of action and judgments thereon had originally existed between Root and petitioner, had been extinguished by the settlements and the causes had been rendered moot. In this state of the record there was no case or controversy in which the Court

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*Even if there were a case or controversy here involved, the intervention permitted below at this late date is contrary to the weight of authority. *Roberts* v. *Metropolitan Life Ins. Co.*, 7 Cir., 94 F. (2d) 277, 281; *American Brake Shoe & F. Co.* v. *Interborough R. Tr. Co.*, 2 Cir., 112 F. (2d) 669; *Baltimore Trust Co.* v. *Interocean Oil Co.*, D. Md., 30 F. Supp. 484, 485; *The American Eagle*, D. Del., 28 F. (2d) 1000, 1001.

of Appeals could permit Skelly Oil Company to intervene.* Since the existence of a case or controversy is a prerequisite to intervention, the Court of Appeals had no jurisdiction to make and enter the orders granting leave to intervene. *Kendrick* v. *Kendrick*, 5 Cir., 16 F. (2d) 744, 745, *cert. den.* 273 U. S. 758; *Godfrey L. Cabot, Inc.* v. *Binney & Smith Co.*, D. N. J., 46 F. Supp. 346, 347; *Haase* v. *Haase*, 261 Ill. 30, 32, 103 N. E. 628.

But it would appear that the Court of Appeals, in granting Skelly Oil Company leave to intervene, has sought to cure this fundamental jurisdictional defect in this proceeding by permiting Skelly to "lift itself by its own bootstraps". One seeking to intervene must, at the time of his petition, have a legal interest in an existing case or controversy. Lacking an existing case or controversy, the Court of Appeals has, in effect, attempted to create such a case or controversy by permitting Skelly Oil Company to intervene on the ground that it had an interest. The obvious defect in the reasoning is, of course, that any interest which Skelly Oil Company could possibly have **had** was not in any preexisting case or controversy but in the case or controversy which the Court purported to create for the first time on the basis of Skelly Oil Company's alleged claim of right to intervene. To put it another way, prior to the intervention of Skelly there was no "fraud issue" in the *Root* case; there were no pleadings and, accordingly, no issue on the question of fraud. The pleadings in the *Root*

*Surely, Skelly Oil Company would not presume to contend that it seeks to intervene in a controversy between petitioner and the Circuit Court of Appeals for the Third Circuit, or the Judges thereof. A controversy of that nature, with one of the parties in the dual role of prosecutor and judge, would violate the most fundamental principles of American jurisprudence.

case dealing exclusively with the Dubbs and Egloff patents had no relationship whatever to the issues in the case in which Skelly Oil Company was interested for its litigation in the Delaware District Court dealt with an entirely different patent (R. 37-43). Skelly Oil Company interjected the issue of alleged fraud in obtaining the *Root* judgments into the Skelly patent litigation by a plea of unclean hands (although entirely different patents were involved) and then was permitted to justify its intervention in the *Root* case on the theory that the intervention in that case injected the same issue therein.

If Skelly may only intervene with respect to an existing issue, how can it be permitted to intervene for the purpose of creating such an issue?

In any event, even if it be assumed, *arguendo,* that the intervention of Skelly Oil Company could create a case or controversy, it is clear that such case or controversy would be a proceeding separate and distinct from any between the original parties to the *Root* case. Such an independent controversy between Skelly Oil Company and petitioner involving whether or not fraud was committed in the *Root* case and the consequences thereof, may not be litigated in a federal court in the absence of diversity of citizenship or some other ground of federal jurisdiction. No such diversity of citizenship would exist in that controversy for both Skelly Oil Company and petitioner are Delaware corporations (R. 32; v. I, p. 115) and no other federal jurisdictional ground has been suggested. The granting of the petition for leave to intervene would, therefore, automatically divest the Circuit Court of Appeals of jurisdiction, even if it be assumed that it otherwise had such jurisdiction. *Cochrane v. W. F. Potts Son & Co.*, 5 Cir., 47 F. (2d) 1026; 2 Moore,

Federal Practice, p. 2333. *Cf. Fulton Bank* v. *Hozier*, 267 U. S. 276.

In addition, the orders granting leave to intervene are contrary to the rule, obtaining in many other Circuit Courts of Appeal, that intervention will not be permitted for the first time in an appellate court. *Wenborne-Karpen Dryer Co.* v. *Cutler Dry Kiln Co.*, 2 Cir., 292 Fed. 861; *Veitia* v. *Fortuna Estates*, 1 Cir., 240 Fed. 256; *Morin* v. *City of Stuart*, 5 Cir., 112 F. (2d) 585. See *Smith* v. *American Asiatic Underwriters*, 9 Cir., 134 F. (2d) 233, 236. *Cf. United States* v. *Patterson*, 15 How. 10.

Conclusion

For the foregoing reasons, it is submitted that the petition should be allowed and that the portions of the orders dated June 20, 1947, herein complained of, entered by the Circuit Court of Appeals for the Third Circuit, should be reviewed and reversed.

Respectfully submitted,

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